

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Conterra Wireless Broadband, LLC (U7057C) for Modification of Existing Certificate of Public Convenience and Necessity to Include Full Facilities-Based Authority.

Application 14-12-004
(Filed December 3, 2014)

DECISION GRANTING APPLICATION OF CONTERRA WIRELESS BROADBAND, LLC TO EXPAND ITS EXISTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO INCLUDE FULL FACILITIES-BASED TELECOMMUNICATION SERVICES

Summary

Pursuant to Public Utilities Code Section 1001, we grant the application of Conterra Wireless Broadband, LLC to expand its existing certificate of public convenience and necessity granted in Decision (D.) 07-12-013¹ to include full facilities-based local exchange telecommunication services subject to the terms and conditions set forth in the Ordering Paragraphs.

1. Background

On December 3, 2014, Conterra Wireless Broadband, LLC (Conterra or Applicant), a corporation authorized to do business in California, filed Application (A.) 14-12-004 seeking Commission authorization to expand its

¹ See D.07-12-013 issued on December 6, 2007.

existing certificate of public convenience and necessity (CPCN) to allow it to provide full facilities-based local exchange telecommunications services.

Decision (D.) 07-12-013 granted Conterra authority to provide limited facilities-based local exchange services in the service territories of Pacific Bell Telephone Company (Pacific) dba AT&T California, Verizon California Inc. (Verizon), SureWest Telephone² (SureWest), and Citizens Telecommunications Company of California Inc., d/b/a Frontier Communications of California (Citizens). Pursuant to its existing CPCN, Conterra provides two product and service packages in California: (1) cellular backhaul transport; and (2) access networks and broadband networks for K-12, healthcare and government entities. Each product and service is delivered over Federal Communications Commission (FCC) licensed common carrier microwave and/or fiber optic transport. In addition, each network is customized to a specific customer's needs and requirements and is not available to the general public through retail sales by Conterra.

Applicant's principal place of business is located at 2101 Rexford Road, Suite 200E, Charlotte, NC 28211.

2. Jurisdiction

Public Utilities Code Section 216(a) defines the term "Public Utility" to include a "telephone corporation," which in turn is defined in Public Utilities Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

² SureWest was formerly known as Roseville Telephone Company.

Pursuant to its current CPCN, Conterra provides the cellular backhaul transport and access networks and broadband network services. In the near future, Conterra may want to construct facilities in California to support the provision of cellular backhaul services or services related to the Federal E-rate program. Such construction activities may include, for example, small-scale trenching and installation of related structures and/or equipment. In addition, Conterra may participate in California Advanced Services Fund (CASF)-funded projects in the future. Conterra requests full facilities-based authority to permit these efforts.

As established in D.07-12-013, Conterra is a telephone corporation and a public utility subject to our jurisdiction.

3. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4³ of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

The Applicant seeks approval for full facilities-based construction authority, subject to prior review and approval by the Commission of specific construction that is exempt from CEQA. Conterra does not request Commission approval of any specific project or construction activity at this time.

Conterra's proposed construction activities generally will include the installation of fiber optic cable and related equipment, primarily in existing

³ Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

conduits and other existing buildings and infrastructure. Conterra's proposed activities pursuant to the requested full facilities-based CPCN most likely will involve construction of reasonably short utility extensions. In order to provide services, Conterra may need to undertake small-scale outside plant construction activities. Such activities may include trenching for the installation of short extensions of underground conduit and the installation of a limited number of equipment shelters or other above-ground support structures. Conterra asserts that its construction activities fall within one or more categorical exemptions under CEQA.

Based on the description of the proposed construction, it is possible that the construction projects described by Conterra may fall within one or more of the categorical exemptions under CEQA for which neither an Environmental Impact Report nor a Negative Declaration is required.

1. Class 3 Exemption: Construction including water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction. This includes the construction of limited numbers of new small facilities or utility extensions. (14 CCR Section 15303.)
2. Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Among other things, this includes *filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored.* (14 CCR Section 304.)
3. Class 32 ("in fill") Exemption applies where: i) the projects are consistent with the applicable general plan designation and applicable general plan policies and applicable zoning designation and regulation; ii) proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; iii) the

project site has no value as habitat for endangered, rare or threatened species; iv) approval of the project would not result in significant effects relating to traffic, noise, air quality or water quality; and v) the site can be adequately served by all required utilities and public services. (14 CCR Section 15332.)

Because Conterra does not know at this time all the specific areas where it may have to undertake specific construction which is contingent on customer requests, Conterra is requesting approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction.

The proposed procedure tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this expedited review process, we are able to review the information on a specific project to confirm that it is categorically exempt from CEQA or to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Conterra to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of Conterra's claimed CEQA exemptions for proposed construction projects:

- Conterra will provide the Commission's Energy Division with:
 - A detailed description of the proposed project, including:
 - Customer(s) to be served;
 - The precise location of the proposed construction project; and

- Regional and local site maps.
- A description of the environmental setting, to include at a minimum:
 - Cultural, historical, and paleontological resources;
 - Biological resources; and
 - Current land use and zoning.
- A construction workplan, to include:
 - Commission Preconstruction Survey Checklist – Archaeological Resources;
 - Commission Preconstruction Survey Checklist – Biological Resources;
 - A detailed schedule of construction activities, including site restoration activities;
 - A description of construction/installation techniques;
 - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information;
 - A list of permits required for the proposed project;
 - A statement of the CEQA exemption(s) applicable to the proposed project; and
 - Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.

The Energy Division will review Conterra's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.

Within 21 days from the date of Conterra's submittal, the Energy Division will issue either:

- A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or

- A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and find that:

- Conterra's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Conterra's facilities-based projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Conterra to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore approve Conterra's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Conterra's full facilities-based authority, based on the specific facts of this case with the following modifications related to the Commission's Energy Division review and approval or disapproval of the proposed exemptions.

If the Energy Division disapproves Conterra's claimed CEQA exemption(s) and issues a letter of denial to Conterra, Conterra must either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

Conterra shall not perform any full facilities-based construction activities without first obtaining an NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

We have previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service, Rulemaking 95-04-043/Investigation 95-04-044. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

4. Financial Qualifications

The minimum financial requirements for providing full facilities-based local exchange telecommunication services are the same as the minimum financial requirements for providing limited facilities-based local exchange telecommunications services.⁴ Because the minimum financial requirements for limited and full facilities-based services are the same, and because Applicant had already demonstrated that it has sufficient resources to meet the minimum financial requirements for limited facilities-based local exchange services in D.07-12-013, Applicant is deemed to have already satisfied the required minimum financial requirements to provide full facilities-based resold local exchange and interexchange telecommunications services.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.⁵

⁴ The financial requirement for Competitive Local Exchange Carriers (LEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers is contained in D.91-10-041.

⁵ D.95-12-056 at Appendix C, Rule 4.A.

Conterra provided information regarding key managers and demonstrated that they have sufficient expertise and training to operate as a telecommunications provider.

Conterra verified that no one associated with or employed by Conterra as an affiliate, officer, director, partner, or owner of more than 10% of Conterra was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that Conterra is in compliance with the requirements of D.95-12-056.

6. Tariffs

Conterra currently has an existing tariff in effect which will continue to be applicable subsequent to authorization of Conterra's expansion from limited facilities-based to full facilities-based telecommunications services.

7. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.⁶ In its application, Conterra provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Rule 3.1(i) Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding General Order (GO) 104-A, Section 2. Conterra states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Conterra, therefore, has nothing to report under this rule. On a going-forward basis, though, Conterra must file all reports required of a public utility under Commission jurisdiction.

9. Expected Customer Base

Conterra provided its estimated customer base for the first and fifth years of operation in Exhibit 5 of its application. Therefore, Conterra has complied with this requirement.

10. Conclusion

The Commission concludes that the application conforms to its rules for certification as a full facilities-based competitive LECs. Accordingly, the Commission grants Conterra authorization to expand the CPCN authority provided to it in D.07-12-013.

Conterra is authorized to provide full facilities-based local exchange telecommunications service in the existing service territories of AT&T, Verizon,

⁶ D.95-12-056 at Appendix C, Rule 4.E.

Citizens, and SureWest subject to compliance with the terms and conditions set forth in D.07-12-013 and this decision.

Conterra is reminded that the CPCN authority granted by this decision provides benefits and corresponding obligations. Conterra receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Conterra is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Conterra is reminded that it continues to be obligated to pay all Commission prescribed user fees and public purpose program surcharges as previously set forth in D.07-12-013 to comply with CEQA, and to adhere to Pub. Util. Code § 451 which states that every public utility “...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

11. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission’s Rules, Conterra has filed motions for leave to file Exhibit 4 (financial statements) and Exhibit 5 (customer base information) to the application as confidential materials under seal. Conterra represents that the information is sensitive, and disclosure could

place Conterra at an unfair business disadvantage. Conterra also filed a motion for leave to file Exhibit 1 (requested information) provided in response to a request from ALJ Duda and ALJ Pro Tem Junaid A. Rahman. Judges Duda and Rahman directed Conterra to file the requested information with the Commission under seal. We have granted similar requests in the past and do so here.

12. Categorization and Need for Hearings

In Resolution ALJ 176-3348, dated December 18, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

13. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g) (2) of the Public Utilities Code and Rule 14.6(c) (2) of the Commission's Rules, the otherwise applicable 30-day period for public review and comment is waived.

14. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Junaid A. Rahman is the assigned Administrative Law Judge Pro Tem in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on December 10, 2014. No protests have been filed. A hearing is not required.

2. Conterra has existing CPCN authority, granted in D.07-12-013, to provide limited facilities-based local exchange telecommunications services in the

territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest, and Citizens.

3. Conterra is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).

4. The Commission is the Lead Agency for this project under CEQA.

5. Conterra's proposed construction activity may fall within one or more CEQA categorical exemptions.

6. Conterra requested a grant of full facilities-based authority subject to compliance with the expedited 21-day review process.

7. Conterra complied with the financial requirements for providing limited facilities-based telecommunications services in its prior application in which it was granted CPCN authority.

8. The financial and technical requirements for limited facilities-based CPCN authority are the same as the financial requirements for full facilities-based CPCN authority.

9. Conterra has an existing tariff applicable for its services.

10. Conterra provided a map of the location of its proposed service territory.

11. Conterra has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding compliance with GO 104 A, Section 2.

12. Conterra Wireless Broadband, LLC provided an estimate of its customer base for the first and fifth year of operation in Exhibit 5 of its application.

13. Pursuant to Rule 11.4, Conterra Wireless Broadband, LLC filed motions for leave to file confidential materials under seal, including Exhibit 4 (financial statements) and Exhibit 5 (customer base information).

Conclusions of Law

1. Conterra should be granted a CPCN to provide full facilities-based local exchange telecommunications service in the service territories of AT&T, Verizon, SureWest, and Citizens.
2. Conterra should be allowed to use the Energy Division's 21 day CEQA review process.
3. Conterra has complied with the financial and technical requirements to provide full facilities-based and resold telecommunications service.
4. Conterra's existing tariff remains applicable.
5. Conterra once granted a CPCN, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California Public Utilities.
6. Conterra's motion to file under seal its Exhibit 4 (financial statements) and Exhibit 5 (customer base information) to the application, should be granted for three years.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity previously granted to Conterra Wireless Broadband, LLC in Decision (D.) 07-12-013 is modified to provide full facilities-based local exchange authority in the service territories of Pacific Bell Telephone Company, dba AT&T California, Verizon California, Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California (Citizens) subject to all previous requirements set forth in D.07-12-013.

2. The corporate identification number assigned to Conterra Wireless Broadband, LLC U7057C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. Conterra Wireless Broadband, LLC (Conterra) must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Conterra must submit a Tier 1 Advice Letter annually, but not later than March 31, with a copy of the executed bond.

4. Conterra Wireless Broadband LLC, Inc. must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

5. Conterra Wireless Broadband, LLC (Conterra) must continue to abide by all the requirements applicable to competitive LEC's as set forth in Decision 07-12-013 and Conterra is subject to the Consumer Protection Rules contained in General Order (GO) 168, and all applicable Commission rules, decisions, GOs, and statutes that pertain to California Public Utilities.

6. Conterra Wireless Broadband, LLC must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

7. The staff of the Commission's Energy Division is authorized to review, process, and act upon Conterra Wireless Broadband, LLC's requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

8. If Conterra Wireless Broadband, LLC wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act (CEQA), Conterra Wireless Broadband LLC shall first apply to the Commission's Energy Division staff for a determination of exemption from CEQA using the following procedure set forth in Ordering Paragraph 9.

9. Conterra Wireless Broadband, LLC will provide the Commission's Energy Division with:

- a. A detailed description of the proposed project, including:
 - i. Customer(s) to be served;
 - ii. The precise location of the proposed construction project; and
 - iii. Regional and local site maps.
- b. A description of the environmental setting, including at a minimum:
 - i. Cultural, historical, and paleontological resources;
 - ii. Biological resources; and
 - iii. Current land use and zoning.
- c. A construction workplan, including:
 - i. Commission Preconstruction Survey Checklist – Archaeological Resources;
 - ii. Commission Preconstruction Survey Checklist – Biological Resources;
 - iii. A detailed schedule of construction activities, including site restoration activities;

- iv. A description of construction/installation techniques;
 - v. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - vi. A list of permits required for the proposed project.
- d. A statement of the California Environmental Quality Act exemption(s) claimed to apply to the proposed project; and
- e. Documentation supporting the finding of exemption from California Environmental Quality Act.
- f. The Energy Division will then review the submittal and notify Conterra Wireless Broadband, LLC (Conterra) of either its approval or its denial of Conterra Wireless Broadband LLC's claim for exemption from California Environmental Quality Act review within 21 days from the time that Conterra's submittal is complete.
- g. If the Energy Division approves Conterra Wireless Broadband, LLC's claimed California Environmental Quality Act exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- h. If the Energy Division disapproves Conterra Wireless Broadband, LLC's claimed California Environmental Quality Act exemptions, the staff will issue to UTILITY a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.
- i. If the Energy Division disapproves Conterra Wireless Broadband, LLC's claimed California Environmental Quality Act (CEQA) exemption(s), Conterra Wireless Broadband LLC shall either re-design the specific project and facilities and then reapply for a finding of exemption from California Environmental Quality Act, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any full facilities-based construction activities.

10. Conterra Wireless Broadband, LLC's (Conterra) motion to file under seal its Exhibit 4 (financial statements) and Exhibit 5 (customer base information) is granted for a period of three years after the date of this order. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Conterra believes that it is necessary for this information to remain under seal for longer than three years, Conterra may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

11. Conterra Wireless Broadband, LLC's motion to file under seal its Exhibit 1 (requested information) provided in response to a request from Administrative Law Judge (ALJ) Dorothy Duda and ALJ Pro Tem Junaid A. Rahman is granted. Exhibit 1 shall be filed under seal.

12. Application 14-12-004 is closed.

This order is effective today.

Dated _____, 2015, at San Francisco, California.